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LS1 LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA (Western Division – Los Angeles)

WAYNE HIMELSEIN, an individual,  
Plaintiff,  
vs.

LS1 LLC, a Pennsylvania Limited  
Liability Company; and  
DOES 1 through 20, inclusive,  
Defendants.

LS1 LLC,  
Counterclaim-Plaintiff,  
vs.  
WAYNE HIMELSEIN and LOGICA  
CAPITAL ADVISERS, LLC,  
Counterclaim-Defendants.

Case No.: 2:18-cv-03940 GW (JCx)

Complaint Filed: 03-16-2018

**STIPULATED PROTECTIVE  
ORDER**

1   **1.   PURPOSES AND LIMITATIONS**

2           Discovery in this action is likely to involve the production of confidential,  
3   proprietary, or private information by the parties and third-parties for which special  
4   protection from public disclosure and from use for any purpose other than prosecuting  
5   this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition  
6   the Court to enter the following Stipulated Protective Order. The parties acknowledge  
7   that this Order does not confer blanket protections on all disclosures or responses to  
8   discovery and that the protection it affords from public disclosure and use extends only  
9   to the limited information or items that are entitled to confidential treatment under the  
10   applicable legal principles.

11   **2.   DEFINITIONS**

12           2.1   Action: The instant action: *Himelsein v. LSI LLC*, Case No.: 2:18-cv-  
13   03940 (C.D. Cal.).

14           2.2   Challenging Party: A Party or Non-Party that challenges the designation of  
15   information or items under this Order.

16           2.3   “CONFIDENTIAL” Information or Items: Information (regardless of how  
17   it is generated, stored or maintained) or tangible things that qualify for protection under  
18   Federal Rule of Civil Procedure 26(c), including, but not limited to, confidential or  
19   proprietary business, commercial, personal or financial information, trade secrets,  
20   confidential research and development, and/or credit, compliance personnel, and  
21   administrative information.

22           2.4   Counsel: Outside Counsel of Record and House Counsel (as well as their  
23   support staff).

24           2.5   Designating Party: A Party or Non-Party that designates information or  
25   items that it produces in disclosures or in responses to discovery as  
26   “CONFIDENTIAL.”

27           2.6   Disclosure or Discovery Material: All items or information, regardless of  
28   the medium or manner in which it is generated, stored, or maintained (including, among

1 other things, testimony, transcripts, and tangible things), that are produced or generated  
2 in disclosures or responses to discovery in this matter.

3 2.7 Expert: A person with specialized knowledge or experience in a matter  
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
5 expert witness or as a consultant in this Action.

6 2.8 House Counsel: Attorneys who are employees of a party to this Action.  
7 House Counsel does not include Outside Counsel of Record or any other outside  
8 counsel.

9 2.9 Non-Party: Any natural person, partnership, corporation, association, or  
10 other legal entity not named as a Party to this action.

11 2.10 Outside Counsel of Record: Attorneys who are not employees of a party to  
12 this Action but are retained to represent or advise a party to this Action and have  
13 appeared in this Action on behalf of that party or are affiliated with a law firm which  
14 has appeared on behalf of that party, and includes support staff.

15 2.11 Party: Any party to this Action, including all of its officers, directors,  
16 employees, consultants, retained experts, and Outside Counsel of Record (and their  
17 support staffs).

18 2.12 Producing Party: A Party or Non-Party that produces Disclosure or  
19 Discovery Material in this Action.

20 2.13 Professional Vendors: persons or entities that provide litigation support  
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
22 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
23 their employees and subcontractors.

24 2.14 Protected Material: Any Disclosure or Discovery Material that is  
25 designated as "CONFIDENTIAL" but excluding publicly available information or  
26 information that a Party already possesses by lawful means subject to any  
27 confidentiality agreement or undertaking that may otherwise apply.

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1           2.15 Receiving Party: A Party that receives Disclosure or Discovery Material  
2 from a Producing Party.

3       **3.     SCOPE**

4           The protections conferred by this Order cover not only Protected Material (as  
5 defined above), but also (1) any information copied or extracted from Protected  
6 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and  
7 (3) any deposition testimony, conversations, or presentations by Parties or their Counsel  
8 that might reveal Protected Material. However, this Order shall not be construed to  
9 cause any Counsel to produce, return and/or destroy their own attorney work product  
10 created in anticipation of or in connection with the Action.

11           Any use of Protected Material during a court hearing or at trial shall be governed  
12 by the orders of the presiding judge. This Order does not govern the use of Protected  
13 Material during a court hearing or at trial.

14       **4.     DURATION**

15           Even after final disposition of this litigation, the confidentiality obligations  
16 imposed by this Order shall remain in effect until a Designating Party agrees otherwise  
17 in writing or a court order otherwise directs.

18       **5.     DESIGNATING PROTECTED MATERIAL**

19           5.1 Exercise of Restraint and Care in Designating Material for Protection.  
20 Each Party or Non-Party that designates information or items for protection under this  
21 Order must take care to limit any such designation to specific material that qualifies  
22 under the appropriate standards. The Designating Party must designate for protection  
23 only those parts of material, documents, items, or oral or written communications that  
24 qualify so that other portions of the material, documents, items, or communications for  
25 which protection is not warranted are not swept unjustifiably within the ambit of this  
26 Order.

27           Mass, indiscriminate, or routinized designations are prohibited. Designations that  
28 are shown to be clearly unjustified or that have been made for an improper purpose

(e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

**5.2 Manner and Timing of Designations.** Except as otherwise provided in this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) For information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions), that the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend") to each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or Non-Party that makes original documents available for inspection need not designate them for protection until after the inspecting Party has indicated which documents it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the "CONFIDENTIAL legend" to each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)

(e.g., by making appropriate markings in the margins).

(b) In the case of documents produced by a Non-Party, designation shall be made by notifying all other Parties in writing of those documents which are to be stamped or otherwise treated as such at any time up to thirty calendar days after actual receipt of copies of those documents by counsel for the Designating Party.

(c) For testimony given in depositions that the Designating Party identifies on the record, before the close of the deposition as Protected Material, or designated as such in writing at any time up to thirty days after the transcript is made available to the Designating Party.

(d) For information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend "CONFIDENTIAL." If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

(e) Prior to the expiration of the above-referenced thirty day periods (or until a designation is made if made before thirty days), as such Discovery Material shall be treated as Protected Material.

5.3 Inadvertent Failures to Designate. If corrected within a reasonable time, an inadvertent failure to designate Protected Material does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

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1           6.2   Meet and Confer. The Challenging Party shall initiate the dispute  
2 resolution process under Local Rule 37-1 et seq.

3           6.3   Joint Stipulation. Any challenge submitted to the Court shall be via a joint  
4 stipulation pursuant to Local Rule 37-2.

5           6.4   The burden of persuasion in any such challenge proceeding shall be on the  
6 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,  
7 to harass or impose unnecessary expenses and burdens on other parties) may expose the  
8 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn  
9 the confidentiality designation, all parties shall continue to afford the material in  
10 question the level of protection to which it is entitled under the Producing Party's  
11 designation until the Court rules on the challenge.

12 **7.   ACCESS TO AND USE OF PROTECTED MATERIAL**

13           7.1   Basic Principles. A Receiving Party may use Protected Material that is  
14 disclosed or produced by another Party or by a Non-Party in connection with this Action  
15 only for prosecuting, defending, or attempting to settle this Action. Such Protected  
16 Material may be disclosed only to the categories of persons and under the conditions  
17 described in this Order. When the Action has been terminated, a Receiving Party must  
18 comply with the provisions of Section 13 below.

19           Protected Material must be stored and maintained by a Receiving Party at a  
20 location and in a secure manner that ensures that access is limited to the persons  
21 authorized under this Order.

22           7.2   Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
23 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
24 may disclose any information or item designated "CONFIDENTIAL" only to:

25                   (a) The Receiving Party's Outside Counsel of Record in this Action, as  
26                   well as employees of said Outside Counsel of Record to whom it is reasonably  
27                   necessary to disclose the information for this Action;

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1 (b) The officers, directors, and employees (including House Counsel) of the  
2 Receiving Party to whom disclosure is reasonably necessary for this Action;

3 (c) Experts (as defined in this Order) of the Receiving Party to whom  
4 disclosure is reasonably necessary for this Action and who have signed the  
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (d) The court and its personnel;

7 (e) Private court reporters and their staff to whom disclosure is reasonably  
8 necessary for this Action and who have signed the “Acknowledgment and  
9 Agreement to Be Bound” (Exhibit A);

10 (f) Professional jury or trial consultants, mock jurors, and Professional  
11 Vendors to whom disclosure is reasonably necessary for this Action and who  
12 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (g) The author or recipient of a document containing the information or a  
14 custodian or other person who otherwise possessed or knew the information;

15 (h) During their depositions, witnesses, and attorneys for witnesses, in the  
16 Action to whom disclosure is reasonably necessary provided: (1) the deposing  
17 party requests that the witness sign the “Acknowledgment and Agreement to Be  
18 Bound” (Exhibit A); and (2) they will not be permitted to keep any confidential  
19 information unless they sign the “Acknowledgment and Agreement to Be Bound”  
20 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the  
21 court. Pages of transcribed deposition testimony or exhibits to depositions that  
22 reveal Protected Material may be separately bound by the court reporter and may  
23 not be disclosed to anyone except as permitted under this Protective Order; and

24 (i) any mediator or settlement officer, and their supporting personnel,  
25 mutually agreed upon by any of the parties engaged in settlement discussions.

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1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
2 **IN OTHER LITIGATION**

3 If a Party is served with a subpoena or a court order issued in other litigation that  
4 compels disclosure of any information or items designated in this Action as  
5 “CONFIDENTIAL,” that Party must:

6 (a) Promptly notify in writing the Designating Party. Such notification shall  
7 include a copy of the subpoena or court order unless prohibited by law;

8 (b) Promptly notify in writing the party who caused the subpoena or order  
9 to issue in the other litigation that some or all of the material covered by the  
10 subpoena or order is subject to this Protective Order. Such notification shall  
11 include a copy of this Protective Order; and

12 (c) Cooperate with respect to all reasonable procedures sought to be  
13 pursued by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served  
15 with the subpoena or court order shall not produce any information designated in  
16 this action as “CONFIDENTIAL” or before a determination by the court from  
17 which the subpoena or order issued, unless the Party has obtained the Designating  
18 Party’s permission, or unless otherwise required by the law or court order. The  
19 Designating Party shall bear the burden and expense of seeking protection in that  
20 court of its confidential material and nothing in these provisions should be  
21 construed as authorizing or encouraging a Receiving Party in this Action to  
22 disobey a lawful directive from another court.

23 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
25 Protected Material to any person or in any circumstance not authorized under this  
26 Protective Order, the Receiving Party must immediately (a) notify in writing the  
27 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all  
28 unauthorized copies of the Protected Material, (c) inform the person or persons to whom

1 unauthorized disclosures were made of all the terms of this Order, and  
2 (d) request such person or persons to execute the “Acknowledgment and Agreement to  
3 Be Bound” that is attached hereto as Exhibit A.

4 **10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
5 **PROTECTED MATERIAL**

6 When a Producing Party gives notice to Receiving Parties that certain  
7 inadvertently produced material is subject to a claim of privilege or other protection, the  
8 obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
9 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
10 may be established in an e-discovery order that provides for production without prior  
11 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
12 parties reach an agreement on the effect of disclosure of a communication or  
13 information covered by the attorney-client privilege or work product protection, the  
14 parties may incorporate their agreement into this Protective Order.

15 **11. MISCELLANEOUS**

16 11.1 Right to Further Relief. Nothing in this Order abridges the right of any  
17 person to seek its modification by the Court in the future.

18 11.2 Right to Assert Other Objections. No Party waives any right it otherwise  
19 would have to object to disclosing or producing any information or item on any ground  
20 not addressed in this Protective Order. Similarly, no Party waives any right to object on  
21 any ground to use in evidence of any of the material covered by this Protective Order.

22 11.3 Filing Protected Material. A Party that seeks to file under seal any  
23 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent  
24 orders of the assigned District Judge and Magistrate Judge. Protected Material may  
25 only be filed under seal pursuant to a court order authorizing the sealing of the specific  
26 Protected Material at issue. If a Party’s request to file Protected Material under seal is  
27 denied by the court, then the Receiving Party may file the information in the public  
28 record unless otherwise instructed by the court.

1 **12. FINAL DISPOSITION**

2 After final disposition of this Action, within 60 days of a written request by the  
3 Designating Party, each Receiving Party must return all Protected Material to the  
4 Producing Party or destroy such material. As used in this subdivision, “all Protected  
5 material” includes all copies, abstracts, compilations, summaries, and any other format  
6 reproducing or capturing any of the Protected Material. Whether the Protected Material  
7 is returned or destroyed, the Receiving Party must submit a written certification to the  
8 Producing Party (and, if not the same person or entity, to the Designating Party) by the  
9 60 day deadline that (1) identifies (by category, where appropriate) all the Protected  
10 Material that was returned or destroyed, and (2) affirms that the Receiving Party has not  
11 retained any copies, abstracts, compilations, summaries, or any other format  
12 reproducing or capturing any of the Protected Material. Notwithstanding this provision,  
13 Counsel re entitled to retain an archival copy of all pleadings, motion papers, trial,  
14 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and  
15 trial exhibits, expert reports, attorney work product, and consult and expert work  
16 product, even if such materials contain Protected Material. Any such archival copies  
17 that contain or constitute Protected Material remain subject to this Protective Order as  
18 set forth in Section 4. Nothing herein shall require any counsel to search his or her  
19 emails for Protected Material and then delete all such emails.

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1 **13. VIOLATION**

2 Any violation of this Order may be punished by appropriate measures including,  
3 without limitation, contempt proceedings and/or monetary sanctions.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5  
6 DATED: January 18, 2019

By /S/ Derek J. Meyer  
DEREK J. MEYER  
Attorneys for Plaintiff/Counterclaim-Defendants

8  
9 DATED: January 18, 2019

By /S/ Stephen A. Weisbrod  
STEPHEN A. WEISBROD  
Attorneys for Defendant/Counterclaim-Plaintiff

10  
11 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

12  
13 DATED: January 22, 2019

/s/  
Honorable Jacqueline Chooljian  
UNITED STATES MAGISTRATE JUDGE

**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that I  
have read in its entirety and understand the Stipulated Protective Order that was issued  
by the United States District Court for the Central District of California on January 22,  
2019, in the case of *Himelsein v. LSI LLC* (Case no. 2:18-cv-03940 GW (JCx)). I agree  
to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
understand and acknowledge that failure to so comply could expose me to sanctions and  
punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
manner any information or item that is subject to this Stipulated Protective Order to any  
person or entity except in strict compliance with the provisions of this Order. I further  
agree to submit to the jurisdiction of the United States District Court for the Central  
District of California for enforcing the terms of this Stipulated Protective Order, even if  
such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection with this  
action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_